

MEMORANDUM

State of Alaska

Department of Law

TO: Glenn Haight
Executive Director
Alaska Board of Fisheries

FROM: Seth M. Beausang *SMB*
Assistant Attorney General

DATE: February 12, 2016

FILE NO.: JU2015200516

TEL. NO.: 269-5289

SUBJECT: Department of Law
comments on proposals
for the February 23-29,
2016 Alaska Peninsula/
Aleutian Island/Chignik
Finfish meeting

The Department of Law has the following comments on the proposals to be considered by the Board of Fisheries at its February 23-29, 2016 Alaska Peninsula/Aleutian Island/Chignik finfish meeting:

Proposals 22-24: These proposals, which were first heard at the Bristol Bay finfish meeting, seek to change administrative areas established by the Commercial Fisheries Entry Commission to regulate limited entry fisheries, by amending regulations that the board has adopted establishing fishing registration areas. CFEC's regulations largely incorporate the board's registration areas in defining limited entry administrative areas. *See, e.g.,* 20 AAC 05.230(a)(1)(A). By statute CFEC is the agency that establishes and modifies limited entry administrative areas. *See* AS 16.43.100(a)(3) & .200. Should the board redefine its registration areas, until CFEC has an opportunity to act and either incorporate or reject the board's changes with respect to CFEC's administrative areas, there will be some uncertainty as to the contours of the administrative areas. One way the board could address this potential uncertainty, should it be inclined to change its registration areas, is to delay the effective date of its action to allow CFEC time to incorporate or reject the board's changes.

Proposal 149: Similar to proposals 22-24, this proposal would amend regulations that the board has adopted establishing fishing registration areas, and which CFEC has incorporated to define limited entry administrative areas. Should the board be inclined to change its registration areas, the board might consider delaying the effective date of its action to allow CFEC time to incorporate or reject the board's changes.

Proposal 152: The board lacks authority to direct the department as to the personnel that will make management decisions as the board does not have administrative, budgeting, or fiscal powers.

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Proposal 164: Although the board has authority to adopt this proposal, the board cannot limit the commissioner's power to open and close areas for conservation and other reasons under AS 16.05.060(a).

Proposal 165: The department appears to be correct in its staff comments that adopting this proposal would not change existing regulations.

Proposal 187: Were the board to adopt this proposal, the board should give direction to the department concerning the allocation of fishery resources among gear types.

Proposal 189: The board probably does not have authority to permanently "lock" two limited entry permits together as described in this proposal.

Proposal 194: Based on the statements in the proposal about the alleged impacts of trawl fishing on subsistence uses in this area, the board is encouraged to consider whether the board's regulations provide a reasonable opportunity for subsistence uses of salmon, other finfish, and crab in this area.